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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/364,432	07/30/1999	WILLIAM M. NORR	W.M.NORR1	9444
7590	03/09/2005		EXAMINER	
RYAN & MASON LLP 90 ROREST AVENUE LOCUST VALLEY, NY 11560			GYORFI, THOMAS A	
			ART UNIT	PAPER NUMBER
			2135	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/364,432	NORR, WILLIAM M.	
	Examiner	Art Unit	
	Tom Gyorfi	2135	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 August 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-38 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

1.. Claims 1-38 are pending examination.

Response to Arguments

2. In view of the appeal brief filed on 8/10/04, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

3. Applicant's arguments with respect to claims 1-3, 5, 10-12, 15-17, 19, 23-26, 30-35 and 37 have been considered but are moot in view of the new ground(s) of rejection.

4. Applicant argues, "*With regard to dependent claims 14 and 28, these claims specify that a storage device accessible to a receiver is adaptable for insertion into (i) a corresponding receptacle of the receiver, and (ii) a corresponding receptacle of an information processing device which establishes a network connection with a server for obtaining a decryption key for decrypting the information in the at least partially-encrypted format. The Examiner relies on the teachings in column 6, lines 30-45, of Sakamoto. These relied-upon teachings mention examples of storage media, such as magnetic tape or*

floppy disks, but fail to meet the particular limitations (i) and (ii) of claims 14 and 28. The collective teachings of Sakamoto and Ramchandran thus fail to disclose or suggest each and every limitation of the claims at issue." Examiner disagrees with this contention. The storage media cited in the rejection constitutes the storage device recited in these claims. As Applicant has chosen to interpret the media in question as magnetic tape or floppy disks, it is thus well known in the art that the standard use of such media requires that they be inserted into an appropriate device (the storage unit 15). Further, it is explicitly disclosed that the third party receiver can also be equipped with a decryption unit equal in functionality to the decryption unit in the original receiver, and thus be capable of obtaining a decryption key for decrypting the at least partially encrypted information.

5. Applicant argues, "*With regard to claims 8 and 22, these claims specify that audio information delivered to a receiver comprises a particular music selection. The Examiner relies on column 8, lines 10-11, of Saito. Applicant is unable to find any teaching whatsoever regarding a particular music selection in the relied-upon portion of Saito.*" Upon further consideration, Saito does in fact disclose that the user may make a particular selection for content (col. 8, lines 12-15) and that there exists an embodiment of the Saito invention in which audio data, which would logically include musical selections, is the content to be transmitted (col. 22, lines 25-30).

6. Applicant argues, "*With regard to claims 36 and 38, these claims call for a web site from which a decryption key is downloaded to an information processing device. The Examiner relies on column 1, lines 35-50, of Saito, but there is no mention in the relied-upon portion regarding the downloading of a decryption key from a web site.*" Upon further consideration, Saito does in fact teach that in at least one embodiment of that invention, a decryption key for encrypted content can be acquired via a web server (col. 16, lines 50-65).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3, 10-12, 14-17, 24-26, 28-35, and 37 rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamoto (U.S. Patent 6,026,164), and further in view of Schneidewend (U.S. Patent 6,529,526).

Referring to Claims 1, 15, 29, 31:

Sakamoto discloses a method of delivering information, the method comprising the step of:

delivering at least a portion of the information to a receiver in an at least partially-encrypted format using multiple bitstreams of a digital communication system, such that access to the information is provided at a first quality level (col 2, lines 45-55; col 3, lines 5-30; col 7, lines 20-30);

and wherein upon decryption of the at least partially-encrypted format, access to the information is provided at another quality level (col 6, lines 5-30).

Sakamoto does not explicitly disclose "wherein the multiple bitstreams are transmitted in subbands of one or more digital sidebands of a carrier signal in the system".

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Schneidewend discloses that it was well known as prior art that multiple bitstreams [digital audio and video] can be transmitted in subbands [subchannels] of one or more digital sidebands [broadcast channels] of a carrier signal [the signal carrying packetized program information] in the system (col. 1, lines 15-30).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Sakamoto such that multiple bitstreams are transmitted in subbands of one or more digital sidebands of a carrier signal in the system. One of ordinary skill in the art would have been motivated to do this because it would provide a system that is able to broadcast multiple channels while using the same bandwidth of one analog channel (Schneidewend: col 1, lines 29-31).

Referring to Claims 33-34:

Sakamoto discloses a method of delivering information, the method comprising the step of: delivering at least a portion of the information to a receiver, using at least first and second bitstreams of a digital communication system (col 4, lines 5-10), wherein the first bitstream is encrypted and the second bitstream is unencrypted (col 3, lines 5-15), such that access to the information is provided at a first quality level (col 4, lines 5-15, 50-55);

and wherein upon decryption of the first bitstream, access to the information is provided at another quality level (col 6, lines 5-30).

Sakamoto does not explicitly disclose "wherein the first and second bitstreams are transmitted in subbands of one or more digital sidebands of a carrier signal in the system".

Schneidewend discloses wherein the first and second bitstreams are transmitted in subbands of one or more digital sidebands of a carrier signal in the system (col. 1, lines 15-30).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Sakamoto such that multiple bitstreams are transmitted in subbands of one or more digital sidebands of a carrier signal in the system. One of ordinary skill in the art would have been motivated to do this because it would provide a system that is able to broadcast multiple channels while using the same bandwidth of one analog channel (Schneidewend: col 1, lines 29-31).

Referring to Claim 35 and 37:

Sakamoto discloses a method of delivering information, the method comprising the steps of: delivering at least a portion of the information to a receiver in an at least partially-encrypted format using multiple bitstreams of a digital communication system, such that access to the information is provided at a first quality level without decrypting the information in the at least partially-encrypted format (col 3, lines 5-30; col 4, lines 5-20); and providing via an electronic commerce system a key for decrypting the information in the at least partially-encrypted format (col 2, lines 30-40; col 4, lines 10-15; col 6, lines 1-20), such that when the information is decrypted, access to the

information is provided at a second quality level higher than the first quality level (col 4, lines 50-55 col 6, lines 15-45);

Sakamoto does not explicitly disclose "wherein the multiple bitstreams are transmitted in subbands of one or more digital sidebands of a carrier signal in the system".

Schneidewend discloses wherein the first and second bitstreams are transmitted in subbands of one or more digital sidebands of a carrier signal in the system (col. 1, lines 15-30).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Sakamoto such that multiple bitstreams are transmitted in subbands of one or more digital sidebands of a carrier signal in the system. One of ordinary skill in the art would have been motivated to do this because it would provide a system that is able to broadcast multiple channels while using the same bandwidth of one analog channel (Schneidewend: col 1, lines 29-31).

Referring to Claims 2 and 16:

Sakamoto in view of Schneidewend disclose the limitations of Claims 1 and 15 above. Sakamoto further discloses wherein access to the information is provided at the first quality level without decrypting the information in the at least partially-encrypted format (col 13, lines 28-25).

Referring to Claims 3 and 17:

Sakamoto in view of Schneidewend disclose the limitations of Claims 1 and 15 above. Sakamoto further discloses providing a key for decrypting the information in the at least partially-encrypted format, such that when the information is decrypted, access to the information is provided at a second quality level higher than the first quality level (col 4, lines 1-15; col 6, lines 5-20).

Referring to Claims 10 and 24:

Sakamoto in view of Schneidewend disclose the limitations of Claims 1 and 15 above. Sakamoto further discloses wherein at least a subset of the multiple bitstreams are unencrypted, and the information at the first quality level is generated using only the unencrypted bitstreams (col 3, lines 30-45; col 13, lines 28-25).

Referring to Claims 11 and 25:

Sakamoto in view of Schneidewend disclose the limitations of Claims 1 and 15 above. Sakamoto further discloses storing the information in the at least partially-encrypted format in a storage device accessible to the receiver (col 6, lines 30-40).

Referring to Claims 12 and 26:

Sakamoto in view of Schneidewend disclose the limitations of Claims 12 and 25 above. Sakamoto further discloses the storage device comprises at least one of a disk, a memory card and a cartridge (col 6, lines 30-40).

Referring to Claims 14 and 28:

Sakamoto in view of Schneidewend disclose the limitations of Claims 11 and 25 above.

Sakamoto further discloses wherein the storage device is adaptable for insertion into (I) a corresponding receptacle of the receiver, and (II) a corresponding receptacle of an information processing device a network connection with a server for obtaining a decryption key for decrypting the information in the at least partially-encrypted format (col 6, lines 30-45).

Referring to Claims 30 and 32:

Sakamoto in view of Schneidewend disclose the limitations of Claims 29 and 31 above. Sakamoto further discloses access to the information is provided at the first quality level without decrypting the information in the at least partially-encrypted format (col 13, lines 28-25), the method further including the step of providing a key for decrypting the information in the at least partially-encrypted format, such that when the information is decrypted, access to the information is provided at a second quality level higher than the first quality level (col 4, lines 1-15; col 6, lines 5-20).

9. Claims 4, 7-8, 13, 18, 21-22, 27, 36, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Sakamoto and Schneidewend as applied to claims 1, 3, 11, 15, 17, 25, 35, and 37 above, and further in view of Saito (U.S. Patent 5,740,246).

Referring to Claims 4, 13, 18, 27, 36 and 38:

Sakamoto in view of Schneidewend disclose the limitations of Claims 3, 11, 17, 25, 35 and 37 above.

Sakamoto in view of Schneidewend does not explicitly disclose "wherein the key for decrypting the information in the at least partially-encrypted format is supplied over a network connection established with a server".

Saito discloses wherein the key for decrypting the information in the at least partially-encrypted format is supplied over a network connection established with a server (col 1, lines 35-50).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Sakamoto in view of Schneidewend such that the key for decrypting the information in the at least partially-encrypted format is supplied over a network connection established with a server. One of ordinary skill in the art would have been motivated to do this because it would provide a key system that controls access to secure information (Saito: col 1, lines 1-8).

Referring to Claims 7 and 21:

Sakamoto in view of Schneidewend disclose the limitations of Claims 1 and 15 above.

Sakamoto in view of Schneidewend does not explicitly disclose "wherein the information delivered to the receiver comprises audio information".

Saito discloses wherein the information delivered to the receiver comprises audio information (col 7, lines 60-65).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the teachings of Sakamoto in view of Schneidewend such audio information is delivered using the system. One of ordinary skill in the art would have been motivated to do this because it would enable the system to control the use of audio/video information based on user payment (Saito: col 8, lines 55-62).

Referring to Claims 8 and 22:

Sakamoto and Schneidewend in view of Saito disclose the limitation of Claims 7 and 21 above. Saito further discloses wherein the audio information comprises a particular music selection (col 8, lines 12-15; col. 22, lines 25-30).

10. Claims 5-6, 9, 19-20, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamoto and Schneidewend as applied to claims 1, 7, 15, and 21 above, and further in view of Kumar (U.S. Patent 5,949,796).

Referring to claims 5 and 19:

Sakamoto in view of Schneidewend disclose the limitations of Claims 1 and 15 above.

Sakamoto in view of Schneidewend does not explicitly disclose "an in-band on-channel (IBOC) digital audio broadcasting system".

Kumar discloses an in-band on-channel (IBOC) digital audio broadcasting system (Kumar, Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an IBOC digital broadcasting system as the means for transmitting the multiple bitstreams found in Sakamoto as modified by Schneidewend. The motivation for doing so would be to take advantage of the upper and lower sidebands provided by the standard for digital audio broadcasting (col. 1, line 45 – col. 2, line 5).

Referring to claims 6 and 20:

The combination of Sakamoto, Schneidewend, and Kumar disclose the limitations of claims 5 and 19 above.

Kumar also discloses wherein the host carrier signal is an analog FM host signal (col. 1, lines 10-15).

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11. Claims 9 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamoto, Schneidewend, and Saito as applied to claims 7 and 21 above, and further in view of Kumar.

Referring to claims 9 and 23:

The combination of Sakamoto, Schneidewend, and Saito disclose the limitations of Claims 7 and 21 above.

Sakamoto teaches that the first quality level corresponds to a low quality level, and a second quality level corresponds to a high quality level (col. 3, lines 5-22). However, none of the references explicitly correlate the quality levels to FM-quality and CD-quality.

Kumar teaches that CD quality is superior to FM quality (col. 2, lines 5-20). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to designate the low quality level of the Sakamoto invention [as modified above] as FM quality audio while designating at least one high quality level as CD quality. The motivation for this would be to provide an audio broadcast system that at a bare minimum functions identically to existing prior art broadcast systems (providing FM quality audio) while also providing an industry-standard higher level of quality (CD quality audio) for privileged users.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Gyorfi whose telephone number is (571) 272-3849. The examiner can normally be reached on 8:00am - 4:30pm Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on (571) 272-3859. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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